



DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO-C-2020-0044]

Development of a National Consumer Awareness Campaign on Combating the Trafficking in Counterfeit and Pirated Products

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Request for comments.

SUMMARY: On January 24, 2020, the Department of Homeland Security (DHS) released its Report to the President of the United States titled “Combating Trafficking in Counterfeit and Pirated Goods” (DHS Report). The report was prepared in response to the April 3, 2019, Presidential Memorandum titled “Memorandum on Combating Trafficking in Counterfeit and Pirated Goods” (Presidential Memorandum). Among the action items identified in the DHS Report was action 11, titled “Establish a National Consumer Awareness Campaign.” To start implementation of this action item, the United States Patent and Trademark Office (USPTO) is seeking information from stakeholders, including, but not limited to, intellectual property rights holders, online third-party marketplaces, third-party intermediaries, and other private sector stakeholders, on the development of a National Consumer Awareness Campaign on Combating the Trafficking in Counterfeit and Pirated Products as a public-private partnership.

DATES: Comments must be received by 5 p.m. ET on [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments and responses to the questions below by one of the following methods:

- a) **Electronic Submissions:** Submit all electronic comments via the Federal e-Rulemaking Portal at <http://www.regulations.gov> (at the homepage, enter “PTO-T-2020-0044” in the “Search” box, click the “Comment Now!” icon, complete the required fields, and enter or

attach your comments). The materials in the docket will not be edited to remove identifying or contact information, and the USPTO cautions against including any information in an electronic submission that the submitter does not want publicly disclosed. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF formats only. Comments containing references to studies, research, and other empirical data that are not widely published should include copies of the referenced materials. Please do not submit additional materials. If you want to submit a comment with business confidential information that you do not wish to be made public, submit the comment as a written/paper submission in the manner detailed below.

- b) **Written/Paper Submissions:** Send all written/paper submissions to: United States Patent and Trademark Office, Mail Stop OPIA, P.O. Box 1450, Alexandria, Virginia 22314. Submission packaging should clearly indicate that materials are responsive to Docket No. PTO-T-2020-0044, Office of Policy and International Affairs, Comment Request; Development of a National Consumer Awareness Campaign on Combating the Trafficking in Counterfeit and Pirated Products.

Submissions of **Business Confidential Information:** Any submissions containing business confidential information must be delivered in a sealed envelope marked “confidential treatment requested” to the address listed above. Submitters should provide an index listing the document(s) or information they would like the Department of Commerce to withhold. The index should include information such as numbers used to identify the relevant document(s) or information, document title and description, and relevant page numbers and/or section numbers within a document. Submitters should provide a statement explaining their grounds for objecting to the disclosure of the information to the public as well. The USPTO also requests that submitters of business confidential information include a non-confidential version (either redacted or summarized) of those confidential submissions that will be available for public viewing and posted on <https://www.regulations.gov>. In the event

that the submitter cannot provide a non-confidential version of its submission, the USPTO requests that the submitter post a notice in the docket stating that it has provided the USPTO with business confidential information. Should a submitter fail to either docket a non-confidential version of its submission or post a notice that business confidential information has been provided, the USPTO will note the receipt of the submission on the docket with the submitter's organization or name (to the degree permitted by law) and the date of submission.

FOR FURTHER INFORMATION CONTACT: Charisma Hampton, USPTO, Office of Policy and International Affairs, at charisma.hampton@uspto.gov. Please direct media inquiries to the Office of the Chief Communications Officer, USPTO, at 571-272-8400.

SUPPLEMENTARY INFORMATION: The DHS Report describes how the rapid growth of e-commerce platforms, “further catalyzed by online third-party marketplaces connected to the platforms, has revolutionized the way products are bought and sold.”¹ However, this overall growth “has facilitated online trafficking in counterfeit and pirated goods.”² American consumers shopping on e-commerce platforms now face a greater risk of purchasing counterfeits, including goods that endanger the health and safety of unsuspecting consumers.

Given the critical role that consumers can play in the battle against online counterfeiting, the DHS Report recommends the development of a national public-private awareness campaign to educate consumers regarding the risks of counterfeit and pirated goods, as well as the various ways consumers can spot counterfeit products.³

¹ DHS Report at 7, available at https://www.dhs.gov/sites/default/files/publications/20_0124_pley_counterfeit-pirated-goods-report_01.pdf.

² DHS Report at 7. Other sections of the DHS Report address both trademark counterfeiting and copyright piracy, but action 9, the subject of this *Federal Register* notice, is limited to trademark counterfeits.

³ See DHS Report at 33.

The development of the DHS Report benefitted from extensive interagency discussions that included DHS, the Department of Justice, the Office of the United States Trade Representative, the Department of Commerce the Food and Drug Administration, the Office of the Intellectual Property Enforcement Coordinator, the Department of State, and also outreach to, and comments from, numerous private sector stakeholders. The USPTO, the International Trade Administration of the Department of Commerce, and many other government agencies work to combat counterfeit goods.

Request for Information:

The USPTO requests information from interested stakeholders, including, but not limited to, intellectual property rights holders affected by the sale of counterfeit goods offered through e-commerce platforms, online third-party marketplaces, third-party intermediaries, other entities with experience in public-private awareness campaigns, and applicable government agencies.

Respondents may address any, all, or none of the following topics and may address additional related issues that have implications for establishing a national consumer awareness campaign designed to educate consumers on the direct and indirect costs and risks of counterfeit and pirated goods. Please identify, where possible, the subject(s) your comments are intended to address.

Respondents may organize their submissions in any manner. Reminder: Respondents have the burden to request that any information contained in a submission be treated as business confidential information and must certify that such information is business confidential and would not customarily be released to the public by the submitter. Business confidential information must be clearly designated as such and provided only by mail carrier as described above.

The USPTO welcomes all input relevant to the development of the guidelines, action plans, strategies, and best practices for establishing a public-private national consumer awareness campaign designed to educate consumers on the direct and indirect costs and risks of counterfeit and pirated goods. The USPTO specifically seeks the following types of information utilized, or under development, by any public or private entity:

- (1) Educational curricula identifying direct and indirect harms associated with sales of counterfeit and pirated products.
- (2) Strategies to ensure consumers make informed purchasing decisions.
- (3) Public service advertisements (PSAs) targeted to social media users.
- (4) Methods to identify false and misleading information on e-commerce pages.
- (5) Alerts for high-risk products and automated warnings describing health impacts.
- (6) “Red flag” indicators for suspicious listings on e-commerce platforms.
- (7) Incentives to empower consumers to participate in monitoring, detecting, and informing platforms and users of counterfeits.

Dated: November 7, 2020.

Andrei Iancu,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

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